

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

**COMMENTS OF NORTH COUNTY COMMUNICATIONS CORPORATION
(SECTION XV OF THE NOTICE OF PROPOSED RULEMAKING
AND FURTHER NOTICE OF PROPOSED RULEMAKING)**

Pursuant to the Commission’s Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (“NPRM”) released on February 9, 2011, North County Communications Corporation (“NCC”), by and through its undersigned counsel, submits its comments on Section XV of the NPRM regarding the Commission’s proposed access stimulation rules.¹

I. INTRODUCTION AND SUMMARY

While NCC agrees that a rulemaking is appropriate in order to reduce certain aspects of access stimulation, the goal of any new rules should be to promote fair competition that encourages the development of new services and benefits the public at large. The new rules

¹ In addition, NCC submitted comments in WC Docket No. 07-135 and CC Docket No. 01-92 on November 12, 2010, and December 17, 2010. Furthermore, on November 18, 2010, NCC filed an *ex parte* notice in both dockets.

should not benefit one type of carrier while discriminating against others. Specifically, the Commission should ensure that the large interexchange carriers (“IXCs”) and incumbent local exchange carriers (“ILECs”) are not be allowed to use their market power and large balance sheets to push for rules that eliminate or otherwise stifle the offerings of smaller carriers that compete with the traditional strongholds of the IXCs and ILECs.

II. THE RURAL PROBLEM AND THE SIMPLE SOLUTION

The main issue to be addressed in this proceeding is the unlawful situation where rural ILECs circumvent rate-of-return regulation by manipulating their cost studies to support high tariffed interstate switched access rates while planning secretly to increase traffic volumes. Indeed, the Commission’s previous focus has been, and should continue to be, on those carriers that can manipulate their interstate switched access tariffs (*e.g.*, rural LECs subject to rate-of-return regulation).²

Increased call volumes are not bad. Increased traffic is a natural result of competitive service and product offerings, but, as the Commission recognized in *Farmers*, high-cost rural areas are territories ripe for abuse. When traffic volumes increase dramatically in an area that uses a rate based on low-volume cost studies, the foundations for the higher access rates in that area do not stand up to scrutiny. The solution is simple: the Commission should require rural, rate-of-return ILECs to file tariffs containing tiered or step-down interstate switched access rates that decrease as traffic volumes increase. Such a solution recognizes the validity of higher costs in rural areas but prohibits carriers from manipulating traffic volumes to game the cost study

² See, *e.g.*, *Qwest Communications Corp. v. Farmers and Merchants Mut. Tel. Co.*, EB-07-MD-001, Memorandum Opinion and Order, 22 FCC Rcd 17973, 17980-83, paras. 21-25 (2007) (finding that *Farmers*’ revenues increased many fold during the period at issue, without a concomitant increase in costs, and *Farmers* vastly exceeded the prescribed rate-of-return), *recon. in part on other grounds*, 23 FCC Rcd 1615 (2008), *further recon. on other grounds*, 24 FCC Rcd 14801 (2009).

system. At the bottom of the tiered or step-down rate – *i.e.*, as very high volumes are achieved – the carrier should be required to match the Regional Bell Operating Company (“RBOC”) rate in that state.³

In those rural areas, the same tiered/step-down approach should apply to competitive local exchange carriers (“CLECs”). No additional rules are required to regulate CLECs. Indeed, the Commission should develop rules that do not impose new requirements on CLECs. The Commission should not in any way reverse 15 years of regulatory policy and competitive development by subjecting CLECs to burdensome cost-study analyses. CLECs are sufficiently regulated now because they are subject to the Commission’s benchmark rules that require CLECs to charge no more than the applicable ILEC’s interstate switched access rate.⁴ With the benchmark, the Commission has ensured that CLECs charge reasonable switched access rates. In addition, that approach continues the intent of the 1996 Act: creation of an even playing field.

III. INBOUND-OUTBOUND CALL RATIO TRIGGERS DISCRIMINATE

Every outbound call results in an inbound call to be terminated by the receiving carrier. That is a fact and no mystery. In the case of every call, both the originating and terminating carriers derive benefits from the call. In some instances, a carrier will receive an equal amount of incoming calls to outgoing calls. In other cases, however, there will be an imbalance in the number of incoming and outgoing calls. Any attempt to impose symmetry on the balance of calls stifles competition.⁵

³ For an example of the tiered/step-down rate supported by NCC, see the Tekstar tariffs attached as Exhibit 14 to NCC’s letter comments filed with the Commission in WC Docket No. 07-135 and CC Docket No. 01-92 on November 12, 2010.

⁴ See 47 C.F.R. § 61.26; *see also CLEC Access Reform Order*, 16 FCC Rcd 9923, 9925, para. 3.

⁵ See, *e.g.*, *ISP Remand Order*, 16 FCC Rcd 9151, ¶5 (2001) (noting that “[t]here is nothing inherently wrong with carriers having substantial traffic imbalances arising from a business decision to target specific types of customers”).

In this proceeding, the Commission should strive to create a system that does not overcharge the originating carrier and also does not penalize that carrier that receives the calls. A very high termination rate penalizes the carrier originating the call, and a low rate punishes the carrier terminating such traffic. To the extent a “bill and keep” approach seems appealing, it must be noted that “bill and keep” arrangements are never equitable or appropriate unless there exists a balance of traffic between carriers. The cost-study based rates of the RBOCs and ILECs have been, and continue to be, appropriate benchmarks for ensuring just and reasonable interstate switched access termination rates.⁶

The FCC should not fall prey to the biased volume estimates put forth by commenting carriers.⁷ Consumers choose to use the services and place the calls that many carriers now attack, and those customers are happily using the telecommunications network for its primary purpose: to place calls. Efforts by the Commission to set triggers – *e.g.*, 3-to-1 limits or any other type of trigger – discourage and limit competitive growth. Indeed, any measure other than a volume-based step-down or tiered rate simply discourages competition and benefits larger carriers who can hide this traffic because of their huge volumes.⁸

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⁶ See *supra* n.4.

⁷ See, *e.g.*, *Ex Parte* Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, *Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers*, CC Docket No. 01- 92, WC Docket No. 07-135 (Nov. 12, 2010).

⁸ For example, a small CLEC that starts with a handful of customers can add a single ISP customer to that base and easily exceed the 3-to-1 ratio, whereas a larger carrier – such as Verizon – can add multiple ISPs to its existing base of customers without significantly altering the statistics of its calling ratios, thereby avoiding the 3-to-1 trigger. Although the small CLEC could petition to refute the assumptions imposed by a 3-to-1 trigger, it is certain all larger IXC's and ILECs will force the CLEC to jump through those hoops and waste valuable resources doing so.

IV. RULES SHOULD NOT CONSIDER CALL CONTENT

Many commenting carriers in these proceedings have attacked free calling services by lumping them into a single category: sex lines. The allegation is unfounded and merely intended to shock. Free conferencing services allow telephone customers to conduct any type of conversation they choose. The discussions can be political, sexual, meteorological, or more mundane in nature. Regardless, the Commission should steer clear of regulating services based on the supposed content of the call or the way a carrier does business. So long as the switched access rate is appropriate, the Commission should not attempt to differentiate call terminations based on conversation content.

Rather than repeat arguments previously submitted, NCC refers the Commission to NCC's First Amendment discussions detailed at pages 10 through 14 of NCC's letter comments filed with the Commission in WC Docket No. 07-135 and CC Docket No. 01-92 on November 12, 2010.

V. RULES SHOULD NOT DISCRIMINATE AGAINST TECHNOLOGIES

In today's telecommunications marketplace, almost all carriers interconnect digitally at some point and in some fashion. Whether the traffic sent across a network is Voice over Internet Protocol ("VOIP") or time-division multiplexing ("TDM") should not matter, nor should the transmission path alter the intercarrier compensation owed for any voice call that transits and touches the public switched telephone network. Although many telecommunications carriers employ VOIP at some point in their networks, a carrier should not be permitted to sprinkle a call with "IP fairy dust" in order to change the price of termination. Allowing any such alteration of telecommunications traffic merely encourages a new form of arbitrage – *e.g.*, intentional

mischaracterization of the jurisdiction of the call or phantom traffic. A voice call is a voice call, and each voice call should be treated the same.

VI. THE *ISP REMAND ORDER* RATE IS NOT AN APPROPRIATE ACCESS RATE FOR VOICE CALLS

In its *ISP Remand Order*, 16 FCC Rcd 9151 (2001), the Commission established a per-minute rate for ISP-bound traffic that decreased over time to \$0.0007 per minute. However, the Commission's decision to create a rate different from the rate applicable to voice calls was not based on the direction of the call; rather, the lower rate was justified due to the length of the typical ISP-bound call. Indeed, dial-up ISP users would stay online and connected to the public switched telephone network for hours and days at a time. Some customers, in order to have instant access to items like electronic mail, would never hang up their phones. Therefore, the Commission found that it was appropriate to set a lower rate.⁹

The scenario is simply not the same for chat line services, whose callers have ordinary hold times. Furthermore, the FCC has, on many occasions, stated that "a minute is a minute" for voice traffic. With conferencing and chat line services, callers are on the phones talking. Thus, voice calls are in no way comparable to dial-up ISP calls. Where a consumer can call or what a consumer can talk about should not influence the Commission's decisions in this proceeding, nor should the Commission differentiate between voice traffic based on content of the conversations.¹⁰

⁹ See *ISP Remand Order*, ¶63 (stating that "[t]he Internet communication is not analogous to traditional telephone exchange services").

¹⁰ See NCC's First Amendment discussions detailed at pages 10 through 14 of NCC's letter comments filed with the Commission in WC Docket No. 07-135 and CC Docket No. 01-92 on November 12, 2010.

Moreover, it must be noted that the IXC's that complain about free calling services receive compensation from their end users who place the calls. Whether the end user pays a per-minute long distance rate to the IXC or a proportionate rate based on a flat-rate calling plan, the IXC's are compensated for the calls that terminate to free calling services, including free conferencing and chat line services.

VII. COMPETITION IS INCREASED BY THE OFFERING OF FREE SERVICES, CARRIER COMMISSIONS AND REVENUE-SHARING ARRANGEMENTS

While some commenting parties wish to encourage services that artificially increase costs to the consumers, the Commission should not be fooled by such advice. Many of the large ILECs and IXC's run their own conferencing services.¹¹ Simply stated, those carriers do not want competition for their services, and they attack other companies' offers of similar services that are cheaper or priced differently.¹²

Not long ago, consumers were being charged in the neighborhood of \$3.99 a minute to call 900 or 976 chat lines. Now those consumers can access chat lines free of charge. Furthermore, the services accessed via 900 or 976 numbers were not available to international callers, payphones, many business lines, and cell phones. Now those similar services are either advertiser supported or provided a small commission for generating the traffic. As a result, consumers who could not pay the high cost of 900 and 976 services can now access similar service at lower prices.

In addition, the free calling services at issue in this proceeding reach beyond residential-type consumers to businesses. For example, business conferencing, which typically requires a

¹¹ See, e.g., Verizon Conferencing: <https://e-meetings.verizonbusiness.com/global/en/index.php>.

¹² Importantly, it should be noted that those large carriers charge access fees in addition to the service charges they collect from consumers.

credit card or a credit account, can cost as much as a dollar per minute. With today's offerings, however, services such as freeconferencecall.com allow small businesses and businesses without credit to conduct conference calls.

If a carrier elects to make less money and collect only on access fees, that should be the carrier's choice. As the above examples demonstrate, many business plans that result in access stimulation encourage competition, develop new service offerings, and provide consumers with a greater range of choices.

VIII. CMRS CONCERNS

With respect to wireless telecommunications traffic that terminates to free calling services, including free conferencing and chat line services, NCC believes the Commission should apply the same access and termination rules. Indeed, more and more consumers are opting for wireless services, and telephone service should be telephone service for purposes of assessing access charges, including reciprocal compensation and intrastate or interstate switched access termination rates. Many CMRS providers refuse to pay compensation to CLECs on the grounds that the CMRS providers have no agreements with the CLECs. The Commission should take steps to ensure that CMRS providers no longer enjoy free termination services while, at the same time, they receive commissions on the toll-free access traffic that they route to ILECs and CLECs. To that end, the Commission should continue its course of having the state public utility commissions establish the appropriate rate.¹³

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¹³ Many state commissions have initiated proceedings to set the CMRS reciprocal compensation rate because of the Commission's decision in *North County Communications Corp. v. MetroPCS California, LLC*, Memorandum Opinion and Order, 24 FCC Rcd 3807 (Enf. Bur. 2009), *pet. for recon. granted in part and denied in part*, 24 FCC Rcd 14036 (2009), *pet. for rev. pending sub nom.*, *MetroPCS California, LLC v. FCC*, No. 10-1003 (D.C. Cir. filed Jan. 11, 2010).

IX. CONCLUSION

For the foregoing reasons, if the Commission adopts new rules to address access stimulation, NCC respectfully requests that the Commission: (1) create a step-down/tiered rate structure for areas served by rate-of-return regulated, rural ILECs; (2) maintain the “benchmark” rule for CLECs; (3) avoid “bill-and-keep” arrangements and volume-based triggers, which serve only to discriminate against smaller carriers and discourage competitive growth; and (4) treat all voice calls the same.

Respectfully submitted,

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